

Calendar No. 151

114TH CONGRESS
1ST SESSION

S. 1599

To provide anti-retaliation protections for antitrust whistleblowers.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2015

Mr. GRASSLEY (for himself and Mr. LEAHY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

JULY 16, 2015

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide anti-retaliation protections for antitrust
whistleblowers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Criminal Antitrust
5 Anti-Retaliation Act of 2015”.

1 **SEC. 2. AMENDMENT TO ACPERA.**

2 The Antitrust Criminal Penalty Enhancement and
3 Reform Act of 2004 (Public Law 108-237; 15 U.S.C. 1
4 note) is amended by inserting after section 215 the fol-
5 lowing:

6 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**

7 **BLOWERS.**

8 **“(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-**
9 **EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—**

10 **“(1) IN GENERAL.**—No employer may dis-
11 charge, demote, suspend, threaten, harass, or in any
12 other manner discriminate against a covered indi-
13 vidual in the terms and conditions of employment of
14 the covered individual because—

15 **“(A)** the covered individual provided or
16 caused to be provided to the employer or the
17 Federal Government information relating to—

18 **“(i)** any violation of, or any act or
19 omission the covered individual reasonably
20 believes to be a violation of, the antitrust
21 laws; or

22 **“(ii)** any violation of, or any act or
23 omission the covered individual reasonably
24 believes to be a violation of, another crimi-
25 nal law committed in conjunction with a
26 potential violation of the antitrust laws or

1 in conjunction with an investigation by the
2 Department of Justice of a potential viola-
3 tion of the antitrust laws; or

4 “(B) the covered individual filed, caused to
5 be filed, testified, participated in, or otherwise
6 assisted an investigation or a proceeding filed
7 or about to be filed (with any knowledge of the
8 employer) relating to—

9 “(i) any violation of, or any act or
10 omission the covered individual reasonably
11 believes to be a violation of, the antitrust
12 laws; or

13 “(ii) any violation of, or any act or
14 omission the covered individual reasonably
15 believes to be a violation of, another crimi-
16 nal law committed in conjunction with a
17 potential violation of the antitrust laws or
18 in conjunction with an investigation by the
19 Department of Justice of a potential viola-
20 tion of the antitrust laws.

21 “(2) LIMITATION ON PROTECTIONS.—Para-
22 graph (1) shall not apply to any covered individual
23 if—

1 “(A) the covered individual planned and
2 initiated a violation or attempted violation of
3 the antitrust laws;

4 “(B) the covered individual planned and
5 initiated a violation or attempted violation of
6 another criminal law in conjunction with a vi-
7 olation or attempted violation of the antitrust
8 laws; or

9 “(C) the covered individual planned and
10 initiated an obstruction or attempted obstruk-
11 tion of an investigation by the Department of
12 Justice of a violation of the antitrust laws.

13 “(3) DEFINITIONS.—In this section:

14 “(A) ANTITRUST LAWS.—The term ‘anti-
15 trust laws’ means section 1 or 3 of the Sher-
16 man Act (15 U.S.C. 1 and 3).

17 “(B) COVERED INDIVIDUAL.—The term
18 ‘covered individual’ means an employee, con-
19 tractor, subcontractor, or agent of an employer.

20 “(C) EMPLOYER.—The term ‘employer’
21 means a person, or any officer, employee, con-
22 tractor, subcontractor, or agent of such person.

23 “(D) PERSON.—The term ‘person’ has the
24 same meaning as in subsection (a) of the first
25 section of the Clayton Act (15 U.S.C. 12(a)).

1 “(4) RULE OF CONSTRUCTION.—The term ‘vio-
2 lation’, with respect to the antitrust laws, shall not
3 be construed to include a civil violation of any law
4 that is not also a criminal violation.

5 “(b) ENFORCEMENT ACTION.—

6 “(1) IN GENERAL.—A covered individual who
7 alleges discharge or other discrimination by any em-
8 ployer in violation of subsection (a) may seek relief
9 under subsection (e) by—

10 “(A) filing a complaint with the Secretary
11 of Labor; or

12 “(B) if the Secretary of Labor has not
13 issued a final decision within 180 days of the
14 filing of the complaint and there is no showing
15 that such delay is due to the bad faith of the
16 claimant, bringing an action at law or equity
17 for de novo review in the appropriate district
18 court of the United States, which shall have ju-
19 risdiction over such an action without regard to
20 the amount in controversy.

21 “(2) PROCEDURE.—

22 “(A) IN GENERAL.—A complaint filed with
23 the Secretary of Labor under paragraph (1)(A)
24 shall be governed under the rules and proce-

1 dures set forth in section 42121(b) of title 49,
2 United States Code.

3 “(B) EXCEPTION.—Notification made
4 under section 42121(b)(1) of title 49, United
5 States Code, shall be made to any individual
6 named in the complaint and to the employer.

7 “(C) BURDENS OF PROOF.—A complaint
8 filed with the Secretary of Labor under para-
9 graph (1)(A) shall be governed by the legal bur-
10 dens of proof set forth in section 42121(b) of
11 title 49, United States Code.

12 “(D) STATUTE OF LIMITATIONS.—A com-
13 plaint under paragraph (1)(A) shall be filed
14 with the Secretary of Labor not later than 180
15 days after the date on which the violation oc-
16 curs.

17 “(E) CIVIL ACTIONS TO ENFORCE.—If a
18 person fails to comply with an order or prelimi-
19 nary order issued by the Secretary of Labor
20 pursuant to the procedures set forth in section
21 42121(b) of title 49, United States Code, the
22 Secretary of Labor or the person on whose be-
23 half the order was issued may bring a civil ac-
24 tion to enforce the order in the district court of

1 the United States for the judicial district in
2 which the violation occurred.

3 **“(e) REMEDIES.—**

4 **“(1) IN GENERAL.**—A covered individual pre-
5 vailing in any action under subsection (b)(1) shall be
6 entitled to all relief necessary to make the covered
7 individual whole.

8 **“(2) COMPENSATORY DAMAGES.**—Relief for any
9 action under paragraph (1) shall include—

10 **“(A)** reinstatement with the same seniority
11 status that the covered individual would have
12 had, but for the discrimination;

13 **“(B)** the amount of back pay, with inter-
14 est; and

15 **“(C)** compensation for any special damages
16 sustained as a result of the discrimination in-
17 cluding litigation costs, expert witness fees, and
18 reasonable attorney's fees.

19 **“(d) RIGHTS RETAINED BY WHISTLEBLOWERS.**—
20 Nothing in this section shall be deemed to diminish the
21 rights, privileges, or remedies of any covered individual
22 under any Federal or State law, or under any collective
23 bargaining agreement.”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Criminal Antitrust
3 Anti-Retaliation Act of 2015”.*

4 **SEC. 2. AMENDMENT TO ACPERA.**

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6 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1
7 note) is amended by inserting after section 215 the fol-
8 lowing:*

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10 **BLOWERS.**

11 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-
12 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

13 “(1) IN GENERAL.—No employer may discharge,
14 demote, suspend, threaten, harass, or in any other
15 manner discriminate against a covered individual in
16 the terms and conditions of employment of the covered
17 individual because of any lawful act done by the cov-
18 ered individual—

19 “(A) to provide or cause to be provided to
20 the employer or the Federal Government infor-
21 mation relating to—

22 “(i) any violation of, or any act or
23 omission the covered individual reasonably
24 believes to be a violation of, the antitrust
25 laws; or

1 “(ii) any violation of, or any act or
2 omission the covered individual reasonably
3 believes to be a violation of, another crimi-
4 nal law committed in conjunction with a
5 potential violation of the antitrust laws or
6 in conjunction with an investigation by the
7 Department of Justice of a potential viola-
8 tion of the antitrust laws; or

9 “(B) to cause to be filed, testify in, partici-
10 pate in, or otherwise assist a Federal Govern-
11 ment investigation or a Federal Government pro-
12 ceeding filed or about to be filed (with any
13 knowledge of the employer) relating to—

14 “(i) any violation of, or any act or
15 omission the covered individual reasonably
16 believes to be a violation of, the antitrust
17 laws; or

18 “(ii) any violation of, or any act or
19 omission the covered individual reasonably
20 believes to be a violation of, another crimi-
21 nal law committed in conjunction with a
22 potential violation of the antitrust laws or
23 in conjunction with an investigation by the
24 Department of Justice of a potential viola-
25 tion of the antitrust laws.

1 “(2) *LIMITATION ON PROTECTIONS.*—Paragraph

2 (1) *shall not apply to any covered individual if—*

3 “(A) *the covered individual planned and*
4 *initiated a violation or attempted violation of*
5 *the antitrust laws;*

6 “(B) *the covered individual planned and*
7 *initiated a violation or attempted violation of*
8 *another criminal law in conjunction with a vio-*
9 *lation or attempted violation of the antitrust*
10 *laws; or*

11 “(C) *the covered individual planned and*
12 *initiated an obstruction or attempted obstruction*
13 *of an investigation by the Department of Justice*
14 *of a violation of the antitrust laws.*

15 “(3) *DEFINITIONS.*—*In this section:*

16 “(A) *ANTITRUST LAWS.*—*The term ‘anti-*
17 *trust laws’ means section 1 or 3 of the Sherman*
18 *Act (15 U.S.C. 1 and 3).*

19 “(B) *COVERED INDIVIDUAL.*—*The term ‘cov-*
20 *ered individual’ means an employee, contractor,*
21 *subcontractor, or agent of an employer.*

22 “(C) *EMPLOYER.*—*The term ‘employer’*
23 *means a person, or any officer, employee, con-*
24 *tractor, subcontractor, or agent of such person.*

1 “(D) *FEDERAL GOVERNMENT.*—The term
2 ‘*Federal Government*’ means—

3 “(i) a *Federal regulatory or law en-*
4 *forcement agency; or*
5 “(ii) any *Member of Congress or com-*
6 *mittee of Congress.*

7 “(E) *PERSON.*—The term ‘*person*’ has the
8 *same meaning as in subsection (a) of the first*
9 *section of the Clayton Act (15 U.S.C. 12(a)).*

10 “(4) *RULE OF CONSTRUCTION.*—The term ‘*viola-*
11 *tion*’, with respect to the antitrust laws, shall not be
12 *construed to include a civil violation of any law that*
13 *is not also a criminal violation.*

14 “(b) *ENFORCEMENT ACTION.*—

15 “(1) *IN GENERAL.*—A covered individual who al-
16 *leges discharge or other discrimination by any em-*
17 *ployer in violation of subsection (a) may seek relief*
18 *under subsection (c) by—*

19 “(A) *filing a complaint with the Secretary*
20 *of Labor; or*

21 “(B) *if the Secretary of Labor has not*
22 *issued a final decision within 180 days of the fil-*
23 *ing of the complaint and there is no showing*
24 *that such delay is due to the bad faith of the*
25 *claimant, bringing an action at law or equity*

1 *for de novo review in the appropriate district
2 court of the United States, which shall have ju-
3 risdiction over such an action without regard to
4 the amount in controversy.*

5 “(2) *PROCEDURE.*—

6 “(A) *IN GENERAL.*—A complaint filed with
7 the Secretary of Labor under paragraph (1)(A)
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10 States Code.

11 “(B) *EXCEPTION.*—Notification made under
12 section 42121(b)(1) of title 49, United States
13 Code, shall be made to any individual named in
14 the complaint and to the employer.

15 “(C) *BURDENS OF PROOF.*—A complaint
16 filed with the Secretary of Labor under para-
17 graph (1)(A) shall be governed by the legal bur-
18 dens of proof set forth in section 42121(b) of title
19 49, United States Code.

20 “(D) *STATUTE OF LIMITATIONS.*—A com-
21 plaint under paragraph (1)(A) shall be filed
22 with the Secretary of Labor not later than 180
23 days after the date on which the violation occurs.

24 “(E) *CIVIL ACTIONS TO ENFORCE.*—If a
25 person fails to comply with an order or prelimi-

1 *nary order issued by the Secretary of Labor pur-*
2 *suant to the procedures set forth in section*
3 *42121(b) of title 49, United States Code, the Sec-*
4 *retary of Labor or the person on whose behalf the*
5 *order was issued may bring a civil action to en-*
6 *force the order in the district court of the United*
7 *States for the judicial district in which the viola-*
8 *tion occurred.*

9 “(c) *REMEDIES.*—

10 “(1) *IN GENERAL.*—A covered individual pre-
11 vailing in any action under subsection (b)(1) shall be
12 entitled to all relief necessary to make the covered in-
13 dividual whole.

14 “(2) *COMPENSATORY DAMAGES.*—Relief for any
15 action under paragraph (1) shall include—

16 “(A) reinstatement with the same seniority
17 status that the covered individual would have
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19 “(B) the amount of back pay, with interest;
20 and

21 “(C) compensation for any special damages
22 sustained as a result of the discrimination in-
23 cluding litigation costs, expert witness fees, and
24 reasonable attorney’s fees.

1 “(d) *RIGHTS RETAINED BY WHISTLEBLOWERS.*—
2 *Nothing in this section shall be deemed to diminish the*
3 *rights, privileges, or remedies of any covered individual*
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